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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 ARTHUR WEST,

12 Plaintiff,

13 v.

14 STEPHEN L. JOHNSON, U.S. EPA  
15 ADMINISTRATOR, U.S. SECRETARY OF  
16 COMMERCE, WASHINGTON STATE  
17 DEPARTMENT OF ECOLOGY, STATE OF  
18 WASHINGTON, PORT OF OLYMPIA,  
19 CITY OF OLYMPIA, WEYERHAEUSER,  
20 LOTT, FEDERAL RAILROAD  
21 ADMINISTRATION,

22 Defendants.

CASE NO. C08-5741RJB

ORDER ON MOTIONS TO STAY  
DISCOVERY AND DEADLINE

23 This matter comes before the Court on Defendants Lisa P. Jackson, Administrator U.S.  
24 Environmental Protection Agency; Gary Locke, Secretary, U.S. Department of Commerce; and  
25 Karen Rae, Deputy Administrator, Federal Railroad Administration, U.S. Department of  
26 Transportation's ("Federal Defendants") Motion to Stay Discovery Pending Ruling on Dispositive  
27 Motion (Dkt. 43), Defendant Washington State Department of Ecology's Motion to Stay  
28 Discovery Pending Ruling on Motion to Dismiss (Dkt. 53), Defendant City of Olympia's Motion  
to Stay Discovery (Dkt. 55), Defendant Lott's Joinder in Co-Defendant City of Olympia's Motion  
to Stay Discovery Pending Ruling on Motion to Dismiss (Dkt. 57), and the Federal Defendant's  
Motion to Stay Deadline for Rule 26 Initial Disclosures (Dkt. 49). The Court has considered the

1 pleadings filed and the file herein.

2       The Federal Defendants state that they seek to stay discovery until their motion to dismiss,  
3 brought pursuant to Fed. R. Civ. P. 12, is decided. Dkt. 43. Defendant Washington State  
4 Department of Ecology states that it seeks a stay of discovery until it's motion to dismiss, brought  
5 under Fed. R. Civ. P. 12 (b) is decided. Dkt. 53. It alleges that it will raise Eleventh Amendment  
6 immunity defenses. *Id.* Both the Federal Defendants and Washington State Department of  
7 Ecology state that their motions to dismiss will be filed the week of June 15, 2009. Dkts. 43, and  
8 53. Defendant City of Olympia, joined by Defendant Lott, state that they seek a stay of discovery  
9 until after their Motions to Dismiss (Dkts. 54 and 56), brought pursuant to Fed. R. Civ. P. 12 (b)  
10 are decided. Dkts. 55 and 57. The Federal Defendants' Motion to Stay the Rule 26 Initial  
11 Disclosures Deadline (Dkt. 49) seeks a stay until after a decision is made on their Motion to  
12 Dismiss.

13       Plaintiff opposes these motions arguing that they are contrary to the requirements of Fed.  
14 R. Civ. P. 56. Dkt. 59. He argues that Defendants' conduct is sanctionable. *Id.*

15       The various Defendants' motions to stay discovery (Dkts. 43, 53, 55, and 57) and the  
16 Federal Defendants' Motion to Stay the Rule 26 Initial Disclosures Deadline (Dkt. 49) should be  
17 granted. Unlike a Fed. R. Civ. P. 56 Motion for Summary Judgment, it appears that each of the  
18 Defendants' Motions to Dismiss, based upon Fed. R. Civ. P. 12, will not require the production of  
19 evidence and will address questions of law. Defendants have made a sufficient showing that  
20 discovery should be stayed for a short period. Discovery should be stayed until July 24, 2009 and  
21 the Rule 26 Initial Disclosures Deadline should be reset to July 24, 2009.

22       Therefore, it is hereby, **ORDERED** that:

- 23 •       The Federal Defendants' Motion to Stay Discovery Pending Ruling on Dispositive  
24 Motion (Dkt. 43) Defendant Washington State Department of Ecology's Motion to Stay  
25 Discovery Pending Ruling on Motion to Dismiss (Dkt. 53), Defendant City of Olympia's  
26 Motion to Stay Discovery (Dkt. 55), Defendant Lott's Joinder in Co-Defendant City of  
27 Olympia's Motion to Stay Discovery Pending Ruling on Motion to Dismiss (Dkt. 57), and  
28

1 the Federal Defendant's Motion to Stay Deadline for Rule 26 Initial Disclosures (Dkt. 49)


2 **ARE GRANTED;**

3 • Discovery is **STAYED** until July 24, 2009;

4 • The Rule 26 Initial Disclosures Deadline is **RESET** to July 24, 2009; and

5 The Clerk of the Court is instructed to send uncertified copies of this Order to all counsel  
6 of record and to any party appearing *pro se* at said party's last known address.

7 DATED this 18<sup>th</sup> day of June, 2009.

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9 ROBERT J. BRYAN  
10 United States District Judge  
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